

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2735 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

POONAM COURIER AND TRANSPORT PVT. LTD.

Versus

REGIONAL PROVIDENT FUND COMMISSIONER

Appearance:

NANAVATI ASSOCIATES for Petitioner
MR BT RAO for Respondent nos.1 and 2.

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 18/04/2001

ORAL JUDGEMENT

#. Shri BT Rao appears for the respondent nos.1 and 2. Bank of India, respondent no.3 is not represented because, it is a fresh matter. After hearing the learned counsel for the petitioner and Shri BT Rao, it is found that this petition can be finally disposed of at the

admission stage without notice to the respondent no.3.

#. The brief facts are that, in response to inquiry under sec.7(A) of the Employees' Provident Fund Act, 1952, the petitioner appeared and submitted its case. After hearing the petitioner, the respondent no.2, in the inquiry under sec.7(A) of the Act, passed an order dated 21-4-1999 directing the petitioner Company to deposit the contribution of Rs.1,89,677=00 for the period April, 1996 to February, 1998 and November, 1998 to March, 1999.

#. The amount of contribution of Rs.1,57,110=00 was deposited by the petitioner Company and information to this effect was given to the respondent nos.1 and 2. On 21-11-2000, a notice was given to the petitioner Company to show cause, why damages on the aforesaid amount should not be levied under sec.14(B) of the Act. On 19-1-2001, order was passed under sec.14(B) directing the petitioner to pay damages for making delayed payment. It is this order under sec.14(B) of the Act, which is under challenge before the Tribunal by filing an appeal. The appeal has been filed but, it could not be admitted for two reasons, firstly, the appeal is said to be delayed by four days and secondly, the Tribunal has not been constituted because, no presiding officer is available so far. Shri BT Rao, learned counsel for the respondent nos.1 and 2 intimates that he can not say, as to when the presiding officer will be appointed in the Tribunal. The matter is, therefore, uncertain and in these circumstances the petitioner has approached this Court for interim protection.

#. No doubt, the appeal has been filed, which has been entertained by the Registrar of the Tribunal in exercise of his powers, yet, according to him, since the appeal is delayed, no order can be passed unless the presiding officer is appointed. He, therefore, advised the petitioner to approach this Court.

#. The controversy involved in the appeal is not to be decided by this Court because, that appeal has to be entertained, admitted/rejected or decided by the Tribunal.

#. The contention of the learned counsel for the petitioner is that, for recovery of the amount under sec.14(B) of the Act, coercive measures have been taken by the respondent nos.1 & 2 and the Bank, respondent no.3 has been directed to seize the account and not to permit the petitioner to operate the same. The petitioner's counsel expresses difficulty on account of this coercive

measure, inasmuch as, on the one hand the petitioner is not able to operate its account because of attachment order and secondly, the petitioner is not able to approach the Tribunal for obtaining stay order in the appeal filed by it, inasmuch as, no presiding officer is available in the Tribunal. In view of these special circumstances, this petition has been filed before this Court.

#. There is no dispute between the learned counsel for the petitioner and Shri BT Rao that the total amount under sec.14(B) comes to Rs.2,19,000=00. Sec.7(0) of the Act provides that, no appeal by the employer shall be entertained by a Tribunal unless he has deposited with it 75% of the amount due from him as determined by an officer referred to in sec.7(A). However, in compliance of this provision, no amount has been deposited by the petitioner, appellant before the Tribunal. It is further informed by the petitioner's counsel and Shri BT Rao that a sum of Rs.66,000=00 has been recovered through coercive process, and in this way, to make up the deficiency of 75 per cent, a sum of Rs.99,000=00 is still left. The petitioner's counsel requests for six weeks' time to deposit Rs.99,000=00 with the department.

#. The request is reasonable. In case, the petitioner deposits a sum of Rs.99,000=00 with the department within a period of six weeks from today, the order of attachment and seizure of accounts of the petitioner passed by the respondent nos.1 and 2 shall remain stayed during the period the Tribunal is made functional and the presiding officer takes over charge of the Tribunal. The petitioner is permitted to operate the accounts with respondent no.3 from the date of this order.

#. It is clarified that the amount of Rs.99,000=00 so deposited together with Rs.66,000=00 recovered through coercive measures shall be treated to be deposit under sec.7(0) of the Act. With this direction and observation the petition is finally disposed of. No order as to cost.

April 18, 2001. [D.C. Srivastava, J.]

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